

Exhibit B

**Counterclaim in Warta v. GST USA, Inc., et al., No. 99-2-02287-4SEA,
County of King, Superior Court of the State of Washington**

1 CERTIFICATE OF SERVICE

2 I certify under penalty of perjury under the laws of the State of
Washington that on this day I caused to be sent via Federal
Express, Next Day Delivery, a copy of this document to
plaintiff's counsel of record.

3 *John J. Dale*
4 Dated: February 23, 1999 at Seattle, Washington.

5 THE HONORABLE JEFFREY M. RAMSDELL

6

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 JOHN WARTA,

10 Plaintiff,

11 v.

12 GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
13 TELECOMMUNICATIONS, INC., a
Canadian corporation,

14 Defendants.

15 No. 99-2-02287-4SEA

16 DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS

17 GST USA, INC., a Delaware corporation;
GST TELECOM, INC., a Delaware
corporation and GST
18 TELECOMMUNICATIONS, INC., a
Canadian corporation,

19 Counterclaim Plaintiffs,

20 JOHN WARTA and his MARITAL
COMMUNITY, W. GORDON
21 BLANKSTEIN, STEPHEN IRWIN,
ROBERT H. HANSON, PETER E.
22 LEGAULT, IAN WATSON, and GLOBAL
23 LIGHT TELECOMMUNICATIONS, INC.,
a Yukon Territory Corporation,

24 Counterclaim Defendants.

25 Defendants GST USA, Inc., GST Telecom, Inc., and GST Telecommunications, Inc.

26 (collectively, the "GST Companies") for their Answer to the Complaint of Plaintiff John

1 Warta, admit, deny and allege as follows:

2 1.

3 Answering paragraph 1, the GST Companies admit that Warta's action is for a
4 purported breach of an employment contract and related claims.

5 2.

6 Answering paragraph 2, the GST Companies admit the allegations of Paragraph 2 of
7 the Complaint.

8 3.

9 Answering paragraph 3, the GST Companies admit the allegations of Paragraph 3 of
10 the Complaint.

11 4.

12 Answering Paragraph 4, the GST Companies admit that an employment agreement
13 was entered into between GUSA, Telecom and Warta on September 1, 1995, and amended
14 on August 22, 1997. The GST Companies further admit that the contract provides that "any
15 action, suit or proceeding with respect to the Agreement . . . shall be brought in the courts of
16 the State of Washington located in Seattle, Washington or in the United States District Court
17 for the district in which Seattle is located . . ." Except as so admitted, the GST Companies
18 deny each and every remaining allegation contained in Paragraph 4 of the Complaint.

19 5.

20 Answering Paragraph 5, the GST Companies admit that Warta controlled a company
21 known as Pacwest Network L.L.C. ("Pacwest"), and that Pacwest was in the
22 telecommunications industry. Defendants also admit that Greenstar Telecommunications,
23 Inc. ("Greenstar") became GST. Except as so admitted, the GST Companies are without
24 sufficient information or knowledge to form a belief as to the truth of the allegations
25 contained in Paragraph 5 of the Complaint, and on that basis, deny each and every remaining
26 allegation contained therein.

6.

Answering Paragraph 6, the GST Companies admit that a Shareholder Agreement was entered into on or about June 21, 1994. Except as so admitted, the GST Companies are without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and on that basis, deny each and every remaining allegation contained therein.

7.

8 Answering Paragraph 7, the GST Companies are without sufficient information or
9 knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of the
10 Complaint, and on that basis, deny each and every allegation contained therein.

8.

12 Answering Paragraph 8, the GST Companies admit that Warta entered into an
13 employment agreement with Telecom on March 1, 1994. The GST Companies also admit
14 that this employment agreement was amended to include GUSA on September 1, 1995, and
15 further amended on August 22, 1997. Except as so admitted, the GST Companies deny each
16 and every remaining allegation contained in Paragraph 8 of the Complaint.

9.

18 Answering Paragraph 9, the GST Companies admit that Warta presided as chief
19 executive officer of Telecom and its subsidiaries, and was a member of the board of directors
20 of these Companies, from on or about June 1994 through June 15, 1998. The GST
21 Companies further admit that Warta was appointed as chief executive officer of GST.
22 Except as so admitted, the GST Companies deny each and every remaining allegation
23 contained in Paragraph 9 of the Complaint.

AS TO THE FIRST CLAIM

10.

26 || Answering Paragraph 10, the GST Companies deny each and every allegation

1 contained in Paragraph 10 of the Complaint.

2 11.

3 Answering Paragraph 11, the GST Companies admit that Warta resigned from the
4 GST Board of Directors on or about September 15, 1998. Except as so admitted, the GST
5 Companies deny each and every remaining allegation contained in Paragraph 11 of the
6 Complaint.

7 12.

8 Answering Paragraph 12, the GST Companies admit to past and present payment of
9 fees and provision of benefits to Warta equal to those under his previous employment
10 agreement with GST, with such payments and provisions to terminate on February 28, 1999,
11 and without prejudice to the parties in the present litigation. Except as so admitted, the GST
12 Companies deny each and every remaining allegation contained in Paragraph 12 of the
13 Complaint.

14 13.

15 Answering Paragraph 13, the GST Companies deny each and every allegation
16 contained in Paragraph 13 of the Complaint.

17 14.

18 Answering Paragraph 14, the GST Companies deny each and every allegation
19 contained in Paragraph 14 of the Complaint.

20 15.

21 Answering Paragraph 15, the GST Companies deny each and every allegation
22 contained in Paragraph 15 of the Complaint.

23 16.

24 Answering Paragraph 16, the GST Companies deny each and every allegation
25 contained in Paragraph 16 of the Complaint.

17.

2 Answering Paragraph 17, the GST Companies deny each and every allegation
3 contained in Paragraph 17 of the Complaint.

18.

5 Answering Paragraph 18, the GST Companies deny each and every allegation
6 contained in Paragraph 18 of the Complaint.

7 **AS TO THE SECOND CLAIM**

19.

9 Answering Paragraph 19, the GST Companies repeat and reallege the admissions and
10 denials contained in paragraphs 1 through 18 above.

20.

12 Answering Paragraph 20, the GST Companies deny each and every allegation
13 contained in Paragraph 20 of the Complaint.

21.

15 Answering Paragraph 21, the GST Companies deny each and every allegation
16 contained in Paragraph 21 of the Complaint.

22.

18 Answering Paragraph 22, the GST Companies deny each and every allegation
19 contained in Paragraph 22 of the Complaint.

20 **AS TO THE THIRD CLAIM**

23.

22 Answering Paragraph 23, the GST Companies repeat and reallege the admissions and
23 denials contained in paragraphs 1 through 22 above.

24.

25 Answering Paragraph 24, the GST Companies deny each and every allegation
26 contained in Paragraph 24 of the Complaint.

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25.

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Answering Paragraph 25, the GST Companies deny each and every allegation contained in Paragraph 25 of the Complaint.

4

26.

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Answering Paragraph 26, the GST Companies deny each and every allegation contained in Paragraph 26 of the Complaint.

7

AS TO THE FOURTH CLAIM

8

27.

9

10

Answering Paragraph 27, the GST Companies repeat and reallege the admissions and denials contained in paragraphs 1 through 26 above.

11

28.

12

13

Answering Paragraph 28, the GST Companies admit that Warta, GST and Pacwest entered into an indemnity agreement (the "Indemnity Agreement") in August, 1998.

14

29.

15

16

Answering Paragraph 29, the GST Companies admit that Section 2 of the Indemnity Agreement includes provisions for damages. Except as so admitted, the GST Companies deny each and every remaining allegation contained in Paragraph 29 of the Complaint.

18

30.

19

20

Answering Paragraph 30, the GST Companies deny each and every allegation contained in Paragraph 30 of the Complaint.

21

31.

22

23

Answering Paragraph 31, the GST Companies deny each and every allegation contained in Paragraph 31 of the Complaint.

24

32.

25

26

Answering Paragraph 32, the GST Companies deny each and every allegation contained in Paragraph 32 of the Complaint.

1 33.

2 Except as expressly admitted above, the GST Companies deny each and every
3 allegation contained in the Warta's Complaint, and the whole thereof.

4 **FOR A FIRST AFFIRMATIVE DEFENSE**, the GST Companies allege as follows:

5 34.

6 (Estoppel, Waiver or Forfeiture)

7 Warta's claims are barred, in whole or in part, by the doctrines of estoppel, waiver
8 and forfeiture by reason of Warta's conduct, actions and communications with the GST
9 Companies and/or their agents or employees.

10 **FOR A SECOND AFFIRMATIVE DEFENSE**, the GST Companies allege as
11 follows:

12 35.

13 (Claims Barred By Contract)

14 Warta's claims are barred, in whole or in part, by the express written contractual
15 terms concerning his employment and employment benefits and by Warta's violation of
16 those contractual terms.

17 **FOR A THIRD AFFIRMATIVE DEFENSE**, the GST Companies allege as
18 follows:

19 36.

20 (Good Faith and Fair Dealing)

21 Warta's claims are barred because the GST Companies acted at all times fairly and in
22 good faith and abided by, honored and acted in accordance with the lawful agreements,
23 policies, practices and procedures which governed the relationship between them.

24 **FOR A FOURTH AFFIRMATIVE DEFENSE**, the GST Companies allege as
25 follows:

1 37.

2 (Failure of Conditions Precedent)

3 Warta's claim for breach of employment agreement is barred because conditions
4 precedent to the GST Companies' alleged performance did not occur.

5 **FOR A FIFTH AFFIRMATIVE DEFENSE**, the GST Companies allege as follows:

6 38.

7 (Plaintiff At Fault)

8 Warta's claims are barred because Warta resigned voluntarily.

9 **FOR A SIXTH AFFIRMATIVE DEFENSE**, the GST Companies allege as
10 follows:

11 39.

12 (Novation)

13 Warta's claim for breach of employment agreement is barred by the doctrine of
14 novation.

15 **FOR A SEVENTH AFFIRMATIVE DEFENSE**, the GST Companies allege as
16 follows:

17 40.

18 (Unclean Hands)

19 Warta's claims are barred, in whole or in part, based on the doctrine of unclean hands.

20 **FOR AN EIGHTH AFFIRMATIVE DEFENSE**, the GST Companies allege as
21 follows:

22 41.

23 (Failure to State a Claim)

24 Warta's claims are barred, in whole or in part, because he has failed to state a claim
25 under Washington law.

1 **FOR A NINTH AFFIRMATIVE DEFENSE**, the GST Companies allege as
 2 follows:

3 42.

4 (Set-Off)

5 Any potentially compensable damages alleged in Warta's complaint are less than
 6 Counterclaim Plaintiffs' damages as set forth below and, therefore, would be compensable
 7 only as a set-off against Counterclaim Plaintiffs' damages.

8 **FOR A FURTHER ANSWER, AND AS COUNTERCLAIMS**, the GST
 9 Companies allege as follows:

10 **INTRODUCTION**

11 43.

12 The termination of Warta's employment may only be placed in proper perspective
 13 through the facts and circumstances of Warta's actions as a GST fiduciary. Thus, by this
 14 Counterclaim, the GST Companies, as Counterclaim Plaintiffs, seek to hold Warta and the
 15 other Individual Counterclaim Defendants accountable for gross and flagrant abuses of their
 16 corporate offices held with Counterclaim Plaintiffs. Seemingly oblivious to their fiduciary
 17 duties as directors and officers, let alone as fiduciaries to a publicly-traded corporation, the
 18 Individual Counterclaim Defendants used their positions for self-enrichment through
 19 manipulation of inside information and the transfer of GST assets to shell corporations they
 20 controlled, in particular, to a company now called Global Light Telecommunications, Inc.
 21 ("Global"), a corporation incorporated under the laws of the Yukon Territory in the hope that
 22 United States jurisdiction could be evaded.

23 44.

24 Specifically, this Counterclaim seeks, among other matters, to remedy the fraud of
 25 Warta and other individuals using thinly-traded stock of a shell corporation to effect a fraud
 26 upon GST, a NASDAQ-traded telecommunications company headquartered in Vancouver,

1 Washington. The Individual Counterclaim Defendants, led by Warta and W. Gordon
 2 Blankstein, acquired cheap stock in a Vancouver, British Columbia, Stock Exchange "shell"
 3 corporation, "Canadian Programming Concepts, Ltd.", and then used their positions as GST
 4 insiders - members of GST's Board of Directors - to transfer an immensely lucrative
 5 Mexican business opportunity, the "Bestel Opportunity," to the shell corporation, with no
 6 compensation to GST. The opportunity so transferred has recently been valued in excess of
 7 \$200 million. In short order, the Individual Counterclaim Defendants' cheap stock in
 8 Canadian Programming Concepts, since renamed GST Global Telecommunications, Inc.,
 9 and then Global Light Telecommunications, Inc., quadrupled in value, resulting in the
 10 personal enrichment of the Individual Counterclaim Defendants at the expense of GST and
 11 its shareholders.

12 45.

13 As described herein, the GST Companies seek to hold the Counterclaim Defendants
 14 accountable for their fraud and to return all equitable and legal interests in and to the Bestel
 15 Opportunity to its rightful owner, GST. Additionally, the Counterclaim seeks to hold
 16 Counterclaim Defendants Warta and Irwin accountable for their reckless breach of duties
 17 regarding the "Magnacom" entities, breaches which have cost GST more than \$10 million.

18 **JURISDICTION AND VENUE**

19 46.

20 This Court has jurisdiction over all causes of action in this Counterclaim pursuant to
 21 RCW §2.08.010 and RCW §4.28.185 because jurisdiction has not been vested exclusively in
 22 any other court, and because Counterclaim Plaintiffs are residents of Washington, and submit
 23 to the jurisdiction of this court, and many of the events giving rise to this complaint occurred
 24 in Washington.

25 47.

26 Venue is proper in King County, Washington because it arises as a Counterclaim to